

Remarks

With entry of this amendment, claims 12-13 and 19-22 are pending in the application with claims 12 and 20 being independent claims. By the foregoing amendment, claims 1-4, 7-11, and 14-16 are sought to be canceled and claims 12-13 and 19-20 are sought to be amended. These changes are believed not to introduce new matter and their entry is respectfully requested. The applicant requests that the Examiner contact his attorney of record to arrange a telephone interview to discuss the outstanding office action and applicant's response thereto when the Examiner reviews this Response.

Rejection under 35 U.S.C. § 112, ¶ 2

Claims 1-20 stand rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, it is asserted in the Office Action that it is not clear as to whether the apparatus is being claimed in combination with a tree stand or just for use with a tree stand.

In response, Applicant has amended the claims by deleting all references to a "bracket" and a "tree stand." Applicant respectfully submits that the amendments to the claims render the 112 paragraph 2 rejection moot, and applicant therefore respectfully requests that the rejection be withdrawn.

Claims 10,11, and 19 stand rejected for including trademarks. These claims have either been canceled or amended to delete all registered trademarks, thereby rendering this basis for rejection moot. Applicant respectfully requests withdrawal of the rejection of these claims.

Rejection under 35 U.S.C. § 102(b)

Claims 1 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,230,689 (Kemp).

Claim 1 has been canceled. Regarding claim 20, applicant has amended this claim to more clearly define his invention. More particularly, amended claim 20 includes the step of “inserting one or both feet and legs into a generally tubular length of material comprising: an open end, a closed end, an inner surface, and an outer surface; an elastic band encircling said open end; a protective mat secured to the outer surface of the closed end of the apparatus; and a fastener attached to the protective mat for securing the closed end of the apparatus to an external surface.”

Kemp does not teach or disclose either 1) a protective mat secured to the outer surface of the closed end of its warming bag, or 2) a fastener attached to the protective mat. Kemp therefore does not anticipate claim 12. *See* MPEP 706.02 (for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention). Applicant respectfully submits that amended claim 20 is in condition for allowance. Withdrawal of the 102 rejection of claim 20 is respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 2-4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of U.S. Patent No. 6,539,966 (Raines).

Claims 7-9, 12, and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of U.S. Patent No. 1,915,044 (Anderson).

Claims 14-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of Anderson and further in view of Raines.

Claims 10-11, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kemp in view of U.S. Patent No. 5,630,439 (Hutto).

By the foregoing amendments, claims 2-4, and 7-11 were canceled, thereby rendering the rejection of those claims moot. Regarding the remaining claims, **claims 12-13 and 19**, applicant has amended these claims to more clearly define his invention. As discussed above in connection with claim 20, claims 12-13 and 19 include the elements of 1) a protective mat secured to the outer surface of the closed end of the apparatus; and 2) a fastener attached to the protective mat for securing the closed end of the apparatus to an external surface. all depend either directly or indirectly from independent claim 1 which, as discussed above, includes as an element a fastener on the closed end of the apparatus for securing the apparatus to a base of a tree stand. Thus, in order to establish a prima case of obviousness, the prior art references when combined must teach or suggest all of the claim limitations including ***a protective mat secured***

to the outer surface of the closed end of the apparatus and a fastener attached to the protective mat for securing the closed end of the apparatus to an external surface. See MPEP 706.02(j) (the prior art reference (or references when combined) must teach or suggest all the claim limitations).

Anderson is relied upon as teaching a protective mat, but Anderson does not teach or disclose a fastener attached to the protective mat. Likewise, none of the references cited teaches a fastener attached to the protective mat for securing the closed end of the warming bag to an external surface. The combination of references cited thus cannot teach or disclose all of the limitations as claimed in claims 12-13 and 19 and a prima facie case of obviousness has not been established. Applicant respectfully requests withdrawal of the 103 rejection of claims 12-13 and 19.

Additionally, applicant respectfully submits that since claim 12 is in condition for allowance, claims 21 and 22, which are necessarily narrower in scope than claim 12, also are in condition for allowance. It is well established in the patent law “that allowance of a parent or base claim as patentable normally results in allowance of a claim dependent upon that claim.”

See DONALD S. CHISUM, CHISUM ON PATENTS § 7.04[2]; *U.S. v. Telectronics, Inc.* , 658 F. Supp. 579, 591, 3 USPQ2d 1571, 1580 (D. Colo. 1987), *aff’d in part and rev’d in part*, 857 F.2d 778, 8 USPQ2d 1217 (Fed. Cir. 1988), *cert. denied*, 109 S. Ct. 1954 (1989)(“Since it would not have been obvious to have made the invention defined in claim 1, ... it would not have been

obvious to make the inventions defined in dependent claims 3, 4 and 5.”); *In re Fine*, 837 F.2d 1071, 1076, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988)(“Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.”).

Since claim 12 is in condition for allowance, claims 21 and 22 likewise are in condition for allowance. Applicant respectfully requests that these claims be allowed.

Conclusion

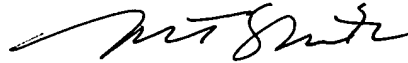
All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

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Respectfully submitted,

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